
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 749 Session of
2021

INTRODUCED BY MENSCH, ARGALL, BARTOLOTTA, MARTIN, PITTMAN,
STEFANO, J. WARD, K. WARD, YAW AND YUDICHAK, JUNE 14, 2021

REFERRED TO HEALTH AND HUMAN SERVICES, JUNE 14, 2021

AN ACT

1 Amending the act of April 17, 2016 (P.L.84, No.16), entitled "An
2 act establishing a medical marijuana program; providing for
3 patient and caregiver certification and for medical marijuana
4 organization registration; imposing duties on the Department
5 of Health; providing for a tax on medical marijuana
6 organization gross receipts; establishing the Medical
7 Marijuana Program Fund; establishing the Medical Marijuana
8 Advisory Board; establishing a medical marijuana research
9 program; imposing duties on the Department of Corrections,
10 the Department of Education and the Department of Human
11 Services; and providing for academic clinical research
12 centers and for penalties and enforcement," in preliminary
13 provisions, further providing for definitions; in patients,
14 further providing for prohibitions; and, in miscellaneous
15 provisions, further providing for insurers and for
16 protections for patients and caregivers and providing for
17 enforcement and civil actions.

18 The General Assembly of the Commonwealth of Pennsylvania
19 hereby enacts as follows:

20 Section 1. Section 103 of the act of April 17, 2016 (P.L.84,
21 No.16), known as the Medical Marijuana Act, is amended by adding
22 definitions to read:

23 Section 103. Definitions.

24 The following words and phrases when used in this act shall
25 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 * * *

3 "Safety-sensitive position." A position that requires any
4 activity that an employer reasonably believes presents a
5 potential risk of harm to the health or safety of an employee or
6 others while under the influence of medical marijuana,
7 including, but not limited to:

8 (1) Duties performed at heights or in confined spaces,
9 including, but not limited to, mining.

10 (2) The operation of a motor vehicle, other vehicle,
11 safety-sensitive equipment, machinery or power tools.

12 (3) Repairing, maintaining or monitoring the performance
13 or operation of any equipment, machinery or manufacturing
14 process, the malfunction or disruption of which could result
15 in injury or property damage.

16 (4) Performing firefighting duties.

17 (5) The operation, maintenance or oversight of critical
18 services and infrastructure, including, but not limited to,
19 electric, gas and water utilities, power generation or
20 distribution.

21 (6) The extraction, compression, processing,
22 manufacturing, handling, packaging, storage, disposal,
23 treatment or transport of potentially volatile, flammable,
24 combustible materials, elements, chemicals or other highly
25 regulated component.

26 (7) Dispensing pharmaceuticals.

27 (8) A position that requires the employee to carry a
28 firearm.

29 (9) Direct patient care or direct child care.

30 * * *

1 "Under the influence." One or more of the following:

2 (1) A drug test pursuant to which it is determined that:

3 (i) the level of tetrahydrocannabinolic acid in an
4 employee's urine is equal to or greater than 15 nanograms
5 per milliliter; or

6 (ii) the employee has provided an adulterated or
7 substituted testing sample.

8 (2) An employer's good faith determination that an
9 employee is under the influence of marijuana based on
10 observable physical behavior or characteristics, provided
11 that the employee may rebut the determination by immediately
12 submitting to a drug test, the results of which demonstrate
13 that the level of tetrahydrocannabinolic acid in the
14 employee's urine is less than 15 nanograms per milliliter.

15 Section 2. Sections 510 and 2102 of the act are amended to
16 read:

17 Section 510. Prohibitions.

18 The following prohibitions shall apply:

19 (1) A patient may not operate or be in physical control
20 of any of the following while under the influence with a
21 blood content of more than 10 nanograms of active
22 tetrahydrocannabis per milliliter of blood in serum:

23 (i) Chemicals which require a permit issued by the
24 Federal Government or a state government or an agency of
25 the Federal Government or a state government.

26 (ii) High-voltage electricity or any other public
27 utility.

28 [(2) A patient may not perform any employment duties at
29 heights or in confined spaces, including, but not limited to,
30 mining while under the influence of medical marijuana.]

1 (3) A patient may be prohibited by an employer from
2 performing any task which the employer deems life-
3 threatening, to either the employee or any of the employees
4 of the employer, while under the influence of medical
5 marijuana. The prohibition shall not be deemed an adverse
6 employment decision even if the prohibition results in
7 financial harm for the patient.

8 (4) A patient may be prohibited by an employer from
9 performing any duty which could result in a public health or
10 safety risk while under the influence of medical marijuana.
11 The prohibition shall not be deemed an adverse employment
12 decision even if the prohibition results in financial harm
13 for the patient.]

14 Section 2102. Insurers.

15 Nothing in this act shall be construed to require an insurer
16 or a health plan, whether paid for by Commonwealth funds or
17 private funds, to provide coverage for medical marijuana.
18 Additionally, notwithstanding any other provision of law, no
19 workers' compensation carrier, self-insured employer or other
20 insurer shall be required to provide coverage for or otherwise
21 reimburse the cost of medical marijuana.

22 Section 3. Section 2103(b)(2) and (3) of the act are amended
23 and subsection (b) is amended by adding paragraphs to read:

24 Section 2103. Protections for patients and caregivers.

25 * * *

26 (b) Employment.--

27 * * *

28 (2) Nothing in this act shall require an employer to
29 make any accommodation of the use of medical marijuana on the
30 property or premises of any place of employment. [This act

1 shall in no way limit an employer's ability to discipline an
2 employee for being under the influence of medical marijuana
3 in the workplace or for working while under the influence of
4 medical marijuana when the employee's conduct falls below the
5 standard of care normally accepted for that position.]

6 (3) Nothing in this act shall require an employer to
7 commit any act that would put the employer or any person
8 acting on its behalf in violation of Federal or State law.

9 (4) An employer may require employees or job applicants
10 who have received a conditional offer of employment to submit
11 to a drug test, including a test for marijuana. An employer
12 may make an adverse employment decision against an employee
13 or job applicant who has provided an adulterated or
14 substituted testing sample or has refused to submit to a
15 lawful drug test required by an employer.

16 (5) An employer or entity that provides employment
17 services or information may indicate that a job position's
18 application process or the job requires a drug test.

19 (6) An employer may require an employee or job applicant
20 who has received a conditional employment offer to disclose
21 and produce a valid identification card if the employee's
22 position, or the position for which the job applicant is
23 applying, is a safety-sensitive position. An employer may
24 make an adverse employment decision against an employee or
25 job applicant who fails to disclose and produce a valid
26 identification card as provided under this act, and the
27 employer shall not be in violation of paragraph (1).

28 (7) An employer may make an adverse employment decision
29 against an employee or job applicant who discloses and
30 produces a valid identification card, or who uses medical

1 marijuana, if the employee's position, or the position for
2 which the job applicant is applying, is a safety-sensitive
3 position, and the employer shall not be in violation of
4 paragraph (1).

5 (8) An employer may make an adverse employment decision
6 against an employee if the employee's use of medical
7 marijuana decreases or lessens the employee's job performance
8 or ability to perform the employee's job duties, and the
9 employer shall not be in violation of paragraph (1).

10 (9) If an employee is under the influence at the time of
11 an otherwise work-related injury and is not certified to use
12 medical marijuana in accordance with this act, the injury
13 shall not be covered by the act of June 21, 1915 (P.L.736,
14 No.338), known as the Workers' Compensation Act.

15 (10) If an injured employee's employment is terminated
16 pursuant to this act and the employer proves that work would
17 have been available to the injured employee but for
18 employee's termination from employment, the injured worker
19 shall not be entitled to disability benefits under the
20 Workers' Compensation Act.

21 (11) An employer shall be granted relief from charges if
22 a former employee is granted unemployment compensation
23 benefits because the employer could not accommodate the
24 employee's lawful use of medical marijuana.

25 (12) For purposes of the act of December 5, 1936 (1937,
26 Sp.Sess. 2, P.L.2897, No.1), known as the Unemployment
27 Compensation Law, it shall constitute conclusive evidence of
28 willful misconduct if an employee's separation from
29 employment was caused by medical marijuana use that violated
30 a lawful workplace policy or refusal to submit to a drug test

1 under this section.

2 (13) Nothing in this act shall be construed to create or
3 imply a cause of action for an employee or job applicant
4 against an employer for:

5 (i) Any claim that arises following an employee's or
6 job applicant's noncompliance with this section and which
7 may have been prevented had the employee or job applicant
8 complied.

9 (ii) Actions taken pursuant to an employer's lawful
10 workplace drug policy, including, but not limited to,
11 subjecting an employee or job applicant to a lawful drug
12 and alcohol test, lawful and nondiscriminatory random
13 drug test and discipline, termination of employment or
14 withdrawal of a job offer after a failure of a drug test.

15 (iii) Actions based on the employer's good faith
16 belief that an employee used or possessed medical
17 marijuana in the employer's workplace or while performing
18 the employee's job duties or while on call in violation
19 of the employer's lawful employment policies.

20 (iv) Actions, including discipline or termination of
21 employment based on the employer's good faith belief that
22 an employee was impaired as a result of the use of
23 medical marijuana, under the influence of medical
24 marijuana while at the employer's workplace, under the
25 influence while performing the employee's job duties or
26 under the influence while on call in violation of the
27 employer's lawful workplace drug policy.

28 (14) If an employer makes an adverse employment decision
29 against an employee or job applicant under this act, the
30 adverse employment decision may not be challenged under any

1 other State or local law.

2 * * *

3 Section 4. The act is amended by adding a section to read:

4 Section 2109.1. Enforcement and civil actions.

5 (a) Regulations.--The Secretary of Labor and Industry shall
6 promulgate regulations to enforce section 2103(b).

7 (b) Civil action.--A complainant may only bring a civil
8 action after all administrative remedies are exhausted.

9 Section 5. This act shall take effect in 60 days.